

**Introduced by Senator Berryhill**

February 17, 2012

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An act to amend Section 12999.5 of the Food and Agricultural Code, relating to pesticides.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1119, as introduced, Berryhill. Pesticides: violations: civil penalties.

Existing law provides that every person who violates a provision of law relating to pesticides, or any regulation issued pursuant thereto, is guilty of a misdemeanor. In lieu of seeking prosecution for a misdemeanor, existing law authorizes the Director of Pesticide Regulation to prosecute a violation civilly, as specified. In lieu of a civil prosecution by the director, existing law authorizes the county agricultural commissioner to levy a civil penalty against a person violating specified provisions of law relating to pest control operations, pesticides, pesticides and worker safety, use of an unregistered pesticide, structural pest control devices, or regulations adopted pursuant to these provisions.

This bill would provide that if the county agricultural commissioner determines that a conflict-of-interest exists, another commissioner designated by the director may levy a civil penalty pursuant to these provisions.

Because this bill would impose a new duty on county agricultural commissioners, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12999.5 of the Food and Agricultural  
2 Code is amended to read:

3 12999.5. (a) (1) In lieu of civil prosecution by the director,  
4 the commissioner may levy a civil penalty against a person  
5 violating Division 6 (commencing with Section 11401), Article  
6 10 (commencing with Section 12971) or Article 10.5 (commencing  
7 with Section 12980) of this chapter, Section 12995, Article 1  
8 (commencing with Section 14001) of Chapter 3, Chapter 7.5  
9 (commencing with Section 15300), or a regulation adopted  
10 pursuant to any of these provisions, of not more than one thousand  
11 dollars (\$1,000) for each violation. Any violation determined by  
12 the commissioner to be a serious violation as defined in Section  
13 6130 of Title 3 of the California Code of Regulations is subject to  
14 a fine of not more than five thousand dollars (\$5,000) for each  
15 violation. It is unlawful and grounds for denial of a permit under  
16 Section 14008 for any person to refuse or neglect to pay a civil  
17 penalty levied pursuant to this section once the order is final.

18 (2) *If the commissioner determines that a conflict of interest*  
19 *exists, another commissioner designated by the director may levy*  
20 *a civil penalty pursuant to this section.*

21 (b) If a person has received a civil penalty for pesticide drift in  
22 a school area subject to Section 11503.5 that results in a serious  
23 violation as defined in subdivision (a), the commissioner shall  
24 charge a fee, not to exceed fifty dollars (\$50), for processing and  
25 monitoring each subsequent pesticide application that may pose a  
26 risk of pesticide drift made in a school area subject to Section  
27 11503.5. The Agricultural Commissioner shall continue to impose  
28 the fee for each subsequent application that may pose a risk of  
29 drift, until the person has completed 24 months without another  
30 serious violation as defined in subdivision (a).

1 (c) Before a civil penalty is levied, the person charged with the  
2 violation shall be given a written notice of the proposed action  
3 including the nature of the violation and the amount of the proposed  
4 penalty, and shall have the right to request a hearing within 20  
5 days after receiving notice of the proposed action. A notice of the  
6 proposed action that is sent by certified mail to the last known  
7 address of the person charged shall be considered received even  
8 if delivery is refused or the notice is not accepted at that address.  
9 If a hearing is requested, notice of the time and place of the hearing  
10 shall be given at least 10 days before the date set for the hearing.  
11 At the hearing, the person shall be given an opportunity to review  
12 the commissioner's evidence and to present evidence on his or her  
13 own behalf. If a hearing is not timely requested, the commissioner  
14 may take the action proposed without a hearing.

15 (d) If the person upon whom the commissioner levied a civil  
16 penalty requested and appeared at a hearing, the person may appeal  
17 the commissioner's decision to the director within 30 days of the  
18 date of receiving a copy of the commissioner's decision. The  
19 following procedures apply to the appeal:

20 (1) The appeal shall be in writing and signed by the appellant  
21 or his or her authorized agent, state the grounds for the appeal, and  
22 include a copy of the commissioner's decision. The appellant shall  
23 file a copy of the appeal with the commissioner at the same time  
24 it is filed with the director.

25 (2) The appellant and the commissioner may, at the time of  
26 filing the appeal or within 10 days thereafter or at a later time  
27 prescribed by the director, present the record of the hearing  
28 including written evidence that was submitted at the hearing and  
29 a written argument to the director stating grounds for affirming,  
30 modifying, or reversing the commissioner's decision.

31 (3) The director may grant oral arguments upon application  
32 made at the time written arguments are filed.

33 (4) If an application to present an oral argument is granted,  
34 written notice of the time and place for the oral argument shall be  
35 given at least 10 days before the date set therefor. The times may  
36 be altered by mutual agreement of the appellant, the commissioner,  
37 and the director.

38 (5) The director shall decide the appeal on the record of the  
39 hearing, including the written evidence and the written argument  
40 described in paragraph (2), that he or she has received. If the

1 director finds substantial evidence in the record to support the  
2 commissioner's decision, the director shall affirm the decision.

3 (6) The director shall render a written decision within 45 days  
4 of the date of appeal or within 15 days of the date of oral arguments  
5 or as soon thereafter as practical.

6 (7) On an appeal pursuant to this section, the director may affirm  
7 the commissioner's decision, modify the commissioner's decision  
8 by reducing or increasing the amount of the penalty levied so that  
9 it is within the director's guidelines for imposing civil penalties,  
10 or reverse the commissioner's decision. Any civil penalty increased  
11 by the director shall not be higher than that proposed in the  
12 commissioner's notice of proposed action given pursuant to  
13 subdivision (c). A copy of the director's decision shall be delivered  
14 or mailed to the appellant and the commissioner.

15 (8) Any person who does not request a hearing pursuant to  
16 subdivision (c) may not file an appeal pursuant to this subdivision.

17 (9) Review of a decision of the director may be sought by the  
18 appellant within 30 days of the date of the decision pursuant to  
19 Section 1094.5 of the Code of Civil Procedure.

20 (e) The commissioner may levy a civil penalty pursuant to  
21 subdivisions (a), (c), and (d) against a person violating paragraph  
22 (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor  
23 Code, which pertains to registration with the commissioner,  
24 carrying proof of that registration, and filing changes of address  
25 with the commissioner.

26 (f) After the exhaustion of the appeal and review procedures  
27 provided in this section, the commissioner or his or her  
28 representative may file a certified copy of a final decision of the  
29 commissioner that directs the payment of a civil penalty and, if  
30 applicable, a copy of any decision of the director or his or her  
31 authorized representative rendered on an appeal from the  
32 commissioner's decision and a copy of any order that denies a  
33 petition for a writ of administrative mandamus, with the clerk of  
34 the superior court of any county. Judgment shall be entered  
35 immediately by the clerk in conformity with the decision or order.  
36 No fees shall be charged by the clerk of the superior court for the  
37 performance of any official service required in connection with  
38 the entry of judgment pursuant to this section.

39 SEC. 2. The California Constitution requires the state to  
40 reimburse local agencies and school districts for certain costs

1 mandated by the state. Statutory provisions establish procedures  
2 for making that reimbursement.  
3 This bill would provide that, if the Commission on State  
4 Mandates determines that the bill contains costs mandated by the  
5 state, reimbursement for those costs shall be made pursuant to  
6 these statutory provisions.

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